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volved. Several different situations might arise: First, a case where at the outset all parties had judges of their nationality on the court; second, a case where one State had such a judge, but the other State did not; and, third, a case where neither had.

Two decisions were possible: Either a judge might be debarred from any case where the interests of his own nation were involved, or provision might be made to have a judge of the nationality of both parties seated on the court.

It was decided to be undesirable to exclude a judge from a case where the interests of his nation were involved, first, because such exclusion would, in a sense, be a reflection on his impartiality, but still more important, because it would remove from the deliberations of the court the man best qualified to explain the law and the point of view of the particular State concerned, and to advise the court as to the best way to handle the decision.

On the other hand, if such a judge were not to be debarred from the court, it would certainly be in the interests of justice to provide that both parties before the court should have a national sitting as a judge. Consequently, if a State appearing before the court does not happen to have a judge on the bench, either the judge of the same nationality among the supplementary judges would be given a seat or, if there were no such supplementary judge, the State would be privileged to name a special judge for the occasion.

Another most important problem is the status before the court of nations not members of the League, for the court has been made possible only by the existence of the League of Nations machinery, is supported entirely by League funds and prestige, and draws its greatest source of strength from the mutual agreements binding together the members of the League. Nevertheless, as the prime purpose of the League is to avoid war, it has been recommended that States not members of the League should be allowed to use the court on special terms.

Here a distinction is made between States mentioned in the Annex to the Covenant, but not yet entered into the League, such as the United States, and States which have not yet been invited to join the League, such as the ex-enemy countries. For the former the court would be open on the same terms as to States in the League, provided that in the particular case involved the obligations of the Covenant, as provided in Article XVII, were accepted and the proportional share of the expenses paid. For the latter class of State the court would be accessible, but without giving full standing as regards the appointment of a special judge and in other details.

Cases before the court would be attended by a large degree of publicity. The moment a case was brought to it the secretariat would notify all members of the League of Nations. The arguments of both sides would be public unless the court accepted the contention of one of the parties that there were reasons justifying a private hearing. The actual deliberations of the court, as with the American Supreme Court, would be private, but the decision, which incidentally would be made by a majority of the judges, would be made in public session and immediately certified to all members of the League.

THE PROPOSED PERMANENT COURT OF INTERNATIONAL JUSTICE

PROJECT ADOPTED BY JURISTS ADVISORY COMMITTEE
AT THE HAGUE; ALSO COVERING LETTER SENT
BY THE COUNCIL OF THE LEAGUE TO
ALL GOVERNMENTS MEMBERS
OF THE LEAGUE

The following project was registered for publication September 15. The next day the Council of the League of Nations gave consideration to the project, and at its meeting at Brussels, in October, it will undoubtedly draft definite and favorable recommendations to the Assembly of the League at its meeting in Geneva, November 15. The important documents which follow will be of special interest to every friend of the American Peace Society.—THE EDITOR.

(The Covering Letter)

LEAGUE OF NATIONS

Permanent Court of International Justice

(21/5970/895.)

(20/31/60.)

SUNDERLAND HOUSE, CURZON STREET,
LONDON, W. I., 27th August, 1920.

The Council of the League of Nations has the honor to communicate to the — Government the scheme presented by the International Committee of eminent jurists who were invited to submit plans for the establishment of a Permanent Court of International Justice, and who have recently concluded their deliberations at The Hague.

The Council do not propose to express any opinion on the merits of the scheme until they have had a full opportunity of considering it, but they permit themselves to accompany the documents with the following observations:

The scheme has been arrived at after prolonged discussion by a most competent tribunal. Its members represented widely different national points of view; they all signed the report. Its fate has therefore been very different from that of the plans for a Court of Arbitral Justice, which were discussed without result in 1907. Doubtless the agreement was not arrived at without difficulty. Variety of opinions, even among the most competent experts, is inevitable on a subject so perplexing and complicated. Some mutual concessions are therefore necessary if the failure of thirteen years ago is not to be repeated. The Council would regard an irreconcilable difference of opinion on the merits of the scheme as an international misfortune of the greatest kind. It would mean that the League was publicly compelled to admit its incapacity to carry out one of the most important of the tasks which it was invited to perform. The failure would be great and probably irreparable; for, if agreement proves impossible under circumstances apparently so favorable, it is hard to see how and when the task of securing it will be successfully resumed.

It is in the spirit indicated by these observations that the Council on their part propose to examine the project submitted to them by the Committee of Jurists, and they trust that in the same spirit the members of the League will deal with this all-important subject when the Council brings the recommendations before the Assembly.

Signed on behalf of the Council of the League of Nations.

_____,
Secretary-General.